

REMARKS

Claims 22, 25-27 and 29-39 were previously pending in the application. By the Amendment, new claims 40 and 41 have been added, and claims 22, 25-27 and 29-39 remain unchanged. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

The claims stand rejected under the cited prior art of record. Specifically, claims 22, 25, 29, 30 and 37-39 were rejected under 35 U.S.C. §103(a) over German Patent Publication DE 196 22 882 (DE '882) in view of German Patent Publication DE 196 47 567 (DE '567). Claims 26 and 27 were rejected under 35 U.S.C. §103(a) as being unpatentable over DE '882 in view of DE '567 and Bovenkerk (U.S. Patent No. 3,167,159). Claim 31 was rejected under 35 U.S.C. §103(a) as being unpatentable over DE '882 in view of DE '567 and Lampman et al. (U.S. Patent No. 4,746,177). Claims 32-35 were rejected under 35 U.S.C. §103(a) as being unpatentable over DE '882 in view of DE '567 and Japanese Patent Publication 2002-336180 (JP '180). Claim 36 was rejected under 35 U.S.C. §103(a) as being unpatentable over DE '882 in view of DE '567, JP '180 and Milocco (U.S. Patent No. 5,273,061).

Independent claim 37 recites a dishwasher including a washing container having a plurality of walls forming a volume in which items to be washed are retained, and a heat damping layer that at least partially surrounds the washing container. The heat damping layer has a variable thermal conductivity in that the heat damping layer can be adjusted between at least a first thermal conductivity value at which thermal conductivity through the heat damping proceeds at a first rate and a second thermal conductivity value at which thermal conductivity through the heat damping proceeds at a second rate different than the first rate.

The heat damping layer contains a closed capsule containing hydrogen in which at least one metal hydride grid is arranged, which can form a chemical compound with the hydrogen and thus bind the hydrogen. The capsule has a selected one of a pressed glass and a non-pressed glass fibre core that is

surrounded by a gastight jacket made of a selected one of a stainless steel sheet and a non-stainless steel sheet.

The heat damping layer is configured such that heating of the capsule has the effect that the hydrogen previously bound in the metal hydride grid is released, the pressure in the capsule increases, and the thermal conductivity of at least one of the capsule and the entire heat damping layer is increased. The heat damping layer is further configured such that cooling of the capsule has the effect that the free hydrogen is resorbed with the metal hydride grid in a chemical compound, the pressure in the capsule drops, and the thermal conductivity of at least one of the capsule and the entire heat damping layer is decreased. The heat damping layer is in heat-conducting contact with one of walls of the washing container and with an outer wall of the dishwasher.

Independent claim 32 recites a method for cleaning and drying items that have been disposed in a dishwasher, such as the dishwasher of claim 37. The heat damping layer can be adjusted between at least a relatively lower thermal conductivity value at which thermal conductivity through the heat damping layer proceeds at a first rate and a relatively higher thermal conductivity value at which thermal conductivity through the heat damping layer proceeds at a second rate higher than the first rate. The dishwasher also has a heat generating means for generating heat in the washing container. The method includes the steps of the heat damping layer containing the capsule; in coordination with the execution of a first section of a washing program during which thermal energy is built up in the washing container by the heat generating means, disposing the heat damping layer at the relatively lower thermal conductivity value by cooling the capsule such that the thermal energy built up in the washing container is substantially preserved in the washing container; and in coordination with the execution of a second section of the washing program during which a drying process is carried out, disposing the heat damping layer at the relatively higher thermal conductivity value by heating the capsule such that at least some of the thermal energy

present in the washing container succeeds to the surroundings via the heat damping layer.

Independent claim 40 recites a dishwasher generally corresponding to independent claim 37 and additionally recites that the dishwasher includes a sound-damping layer surrounding the washing container, where the heat damping layer is disposed between the sound-damping layer and the walls of the washing container. Independent claim 41 also substantially corresponds to independent claim 37 and additionally recites that the walls of the washing container forming the volume in which items to be washed are retained are at least partially configured as condensing surfaces made of a flexible material comprising a metal film having an aluminum component.

With regard to the rejection over DE '882 in view of DE '567, Applicant hereby reasserts the remarks from the Amendment filed May 19, 2009 and the Request for Reconsideration filed November 10, 2009. In the "Response to Arguments" section in the Office Action, the Examiner again cites *In re Keller* for the proposition that "the test for obviousness is not whether the features of the secondary reference may be bodily incorporated into the structure of the primary reference" In the next sentence, however, the Examiner proceeds to "bodily incorporate" the features of DE '567 into the DE '882 structure. In particular, the Examiner provides that "the getter material would function in the combination of DE '882 and DE '567 since the heat damping layer as mentioned in DE '567 is used instead of the heat damping layer of DE '882." As discussed previously, Applicant maintains that the modifications proposed in the Office Action would not be readily determinable by those of ordinary skill in the art in view of the cited references.

The Examiner also addresses Applicant's contention that the combination of references cited in the Office Action is a product of improper hindsight. The Examiner provides that any judgment on obviousness is necessarily a reconstruction based upon hindsight reasoning "but so long as it takes into

account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the Applicant's disclosure, such a reconstruction is proper." Nothing in DE '882 or DE '567, however, would lead those of ordinary skill in the art to substitute the DE '567 building insulation panel for the heat storage construction disclosed in DE '882 as contended by the Examiner. As noted, Applicant in fact disagrees that the knowledge necessary to make the proposed modifications was within the level of ordinary skill in the art. The purported motivation for the proposed modification is based on the contention that "it is well known in the art that an insulation efficiency of a vacuum insulation is higher than an insulation efficiency of a non-vacuum insulation." The Office Action, however, does not provide any evidence to support this contention, nor is this contention addressed in the references of record. If in fact the Examiner's statement with regard to insulation efficiency is "well known in the art," the Examiner should be able to identify a prior art document that supports this contention.

With regard to independent claim 32, as also discussed previously, the modifications proposed in the Office Action are beyond the capabilities of one of ordinary skill in the art. Additionally, neither DE '882 nor DE '567 would lead those of ordinary skill in the art to modify the DE '882 structure as proposed by the Examiner.

The dependent claims should be allowable for the same reasons and also because they recite additional patentable subject matter. The additional secondary references do not overcome the deficiencies noted with regard to DE '882 and DE '567.

Reconsideration and withdrawal of the rejections are respectfully requested.

Claim 40 includes subject matter similar to that of claim 37, and Applicant submits that claim 40 is allowable for similar reasons. Additionally, claim 40 recites that the dishwasher includes a sound-damping layer surrounding the

washing container, where the heat damping layer is disposed between the sound-damping layer and the walls of the washing container. Support for this subject matter can be found in the specification at, for example, page 8, lines 24-29 and Figs. 1 and 2. This subject matter is also lacking in the references of record.

Claim 41 similarly includes the features of claim 37 and is allowable for similar reasons. Additionally, claim 41 recites that the walls of the washing container forming the volume in which items to be washed are retained are at least partially configured as condensing surfaces made of a flexible material comprising a metal film having an aluminum component. Support for this subject matter can be found in the specification at, for example, page 11, lines 10-17. Related subject matter is defined in claim 31, which was rejected as obvious over DE '882 in view of DE '567 and Lampman. As noted in the Office Action, however, Lampman discloses a dishwasher having a flexible plastic tub. Lampman thus lacks the claimed walls of the washing container being made of a flexible material comprising a metal film having an aluminum component.

CONCLUSION

In view of the above, entry of the present Amendment and allowance of Claims 22, 25-27 and 29-41 are respectfully requested. If the Examiner has any questions regarding this amendment, the Examiner is requested to contact the undersigned. If an extension of time for this paper is required, petition for extension is herewith made.

Respectfully submitted,

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